

Public Act 91-0872, effective July 1, 2000, amended the Retailers' Occupation Tax Act by providing that, beginning on July 1, 2000 and through December 31, 2000, the Retailers' Occupation Tax imposed upon motor fuel and gasohol is at the rate of 1.25%. See 86 Ill. Adm. Code 130.101 (Emergency). (This is a GIL).

August 10, 2000

Dear Xxxxx:

This letter is in response to your letter dated July 24, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

Recently the Department published emergency regulations under section 130.101 regarding the temporary sales tax reduction on motor fuel. These regulations indicate that 'diesel fuel' is considered a motor fuel and eligible for the reduced rate, while 'heating oil' is not motor fuel and not eligible for the reduced rate unless it is delivered directly into the fuel supply tank of a motor vehicle. This implies that 'diesel fuel' is eligible for the lower rate regardless of how the retailer delivers it, whether delivered directly into the vehicle from a retail pump or into a bulk storage tank from a tankwagon truck. This diesel fuel/heating oil classification of fuel is particularly important to the retailer with bulk sales of fuel since it materially impacts the selling price of fuel going into bulk storage tanks.

Since 'diesel fuel' and 'heating oil' are the same product, the retailer cannot look to the physical characteristics of the fuel in order to identify it as 'diesel fuel' or 'heating oil'. For your reference, following are definitions taken from the U.S. Energy Information Administration regarding distillate fuels:

Distillate Fuel Oil. A general classification for one of the petroleum fractions produced in conventional distillation operations. It is used primarily for space heating, on-and-off highway diesel engine fuel (including railroad engine fuel and fuel for agricultural machinery), and electric power generation. Included are products known as No. 1, No. 2, and No. 1 fuel oils; No. 1, No. 2, and No. 4 diesel fuels. Distillate fuel oil is reported in the following sulfur categories: 0.05% sulfur and under, for use in on-highway diesel engines which could be described as meeting EPA regulations; and greater than 0.05% sulfur, for use in all other distillate applications.

No. 1 Distillate. A petroleum distillate which meets the specifications for No. 1 heating or fuel oil as defined in ASTM D 396 and/or the

specifications for No. 1 diesel fuel as defined in ASTM 550° F at the 90-percent recovery point, and kinematic viscosities between 1.4 and 2.2 centistokes at 100° F.

No. 2 Distillate. A petroleum distillate which meets the specifications for No. 2 heating or fuel oil as defined in ASTM D 396 and/or the specifications for No. 2 diesel fuel as defined in ASTM Specification D 975 with distillation temperatures of 540 and 640 F at the 90-percent recovery point, and kinematic viscosities between 2.0 and 4.3 centistokes at 100° F.

No. 4 Fuel Oil. A fuel oil for commercial burner installations not equipped with preheating facilities. It is used extensively in industrial plants. This grade is a blend of distillate fuel oil and residual fuel oil stocks that conforms to ASTM Specification D396 or Federal Specification W-F-815C; with minimum and maximum kinematic viscosities between 5.8 and 26.4 centistokes and 100° F. Also included is No. 4-D, a fuel oil for low and medium-speed diesel engines that conforms to ASTM Specification D975.

Generally, product removed by truck from Illinois terminals destined for the retail market is either No. 1 or No. 2 distillate. Since these products meet or exceed the ASTM specifications for both diesel fuel and heating oil, the terms 'diesel fuel', 'heating oil' and 'fuel oil' are used interchangeably to describe the same exact product. At the terminal, the distillate fuel can be dyed when delivered into the transport truck to indicate off-highway use and avoid excise tax. After removal from the terminal, retailers generally sell the fuel under different marketing names even though selling the same exact product. However, some wholesale distributors may introduce additives and market the product as a premium product such as 'premium diesel fuel'.

The regulations do provide some guidance indicating that 'diesel fuel' is defined as any petroleum product intended for use or offered for sale as a fuel for engines...'. However, this definition does not offer guidance as to what fuel qualifies as 'intended for use or offered for sale'. We would like additional guidance to aid in answering the 'diesel fuel'/'heating oil' question. Specifically:

1. How will the Illinois Department of Revenue distinguish which sales of No. 1 or No. 2 distillate qualify as 'diesel fuel' eligible for the reduced sales tax rate?
2. Under what circumstances are No. 1 or No. 2 distillate considered to be 'heating oil' and only eligible for the reduced rate if delivered directly into the supply tank of a motor vehicle.
3. If dyed No. 1 or No. 2 distillate is delivered into a bulk storage tank by the retailer for use by the customer in a off-road motor vehicle, is the retail sale subject to the reduced tax rate? Does the retailer need documentation to support that the sale was for use in a motor vehicle?

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4. In the definition of 'diesel fuel', we assume 'intended for use' and 'offered for sale' means No. 1 or No. 2 distillate sold from a retail pump for motor vehicle use would be subject to the reduced tax rate. Is this correct? Under what circumstances would sales of No. 1 or No. 2 distillate delivered from a tankwagon truck into storage tanks be considered 'intended for use' or 'offered for sale' as diesel fuel.

Your prompt response would be appreciated. If you have any questions, please contact us.

As you are aware, Public Act 91-0872, effective July 1, 2000, amended the Retailers' Occupation Tax Act by providing that, beginning on July 1, 2000 and through December 31, 2000, the Retailers' Occupation Tax imposed upon motor fuel and gasohol is at the rate of 1.25%. See 86 Ill. Adm. Code 130.101 (Emergency). Among other things, "motor fuel" includes "special fuel," which includes "diesel fuel." "Diesel fuel" is defined as any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark. 35 ILCS 505/2 (1998 State Bar Edition). In general, if a petroleum product meets the definition of "diesel fuel," it is subject to the 1.25% rate imposed upon motor fuel, irrespective of how the product is classified for marketing purposes. That is, if a petroleum product is "intended for use" or "offered for sale" as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark, it is considered "diesel fuel," which is subject to the reduced rate.

With regard to sales of dyed diesel fuel, the fact that the diesel fuel is dyed in accordance with the Motor Fuel Tax Law is immaterial for sales tax purposes. Sales of dyed diesel fuel are considered sales of motor fuel and are subject to the 1.25% rate of tax under the Retailers' Occupation Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.